IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/02/2004

CORAM

THE HON'BLE MR.JUSTICE V.S.SIRPURKAR

W.P.No. 18413 of 1996

Jainabi,
rep. By her Power Agent
Shaik Ali ..Petitioner

-vs-

1.The State of Tamil Nadu,
rep. By the Secretary to Govt.,
Adi Dravidar Welfare Department,
Fort St. George,
Chennai-9.

2.The Additional Collector,
south Arcot Vallalar District,
Cuddalore. ..Respondents

Petition filed under Art.226 of the Constitution of India, praying for the issue of writ of certiorari, calling for the records of the notice issued by the 2nd respondent in Gazette Notification No.5, dated 19.6.1996 under Section 4 (1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) and quashing the same.

For Petitioner : Mr.Srinath Sridevan

For respondents : Mr.S.P.Sivashanmughasunda
Addl. Govt. Pleader

:ORDER

The challenge is to the Land Acquisition Proceedings. In this case, the proceedings are under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).
2. The notice under Section 4 (1) of the Act was served on 18.11.199 5 for which the landlord claims to have sent her objections on 9.12.1 995. Thereafter, declaration came to be made on 19.6.1996.

3. The only point agitated by the landlord in the whole proceedings is that the order which the Collector has passed under Section 4 (3) of the Act has not been served upon the landlord and, therefore, that order has

become non est and bad in law.

4. Learned counsel appearing on behalf of the petitioner took me through the provisions of Section 4 of the Act, which reads as under:-

"4. Power to acquire land.--(1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such order as he may deem fit on the cause so shown:

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the case so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

He, therefore, argues from the plain language of this section that there is an inbuilt duty cast on the District Collector to serve on the landlord the order which he passes taking into consideration the objections raised by the landlord.

5. As against this, the learned counsel for the Government says that there is no such duty, at least spelt out from the language of the section and there is no such rule also. When we consider the language of this section all that it says is that before publishing a notice under Section 4 (1), there is an enquiry to be made by the Collector or any officer authorised by the Collector from the owner or any other person who might be interested in that land. That will be in the nature of a show cause notice. Under Section 3 (a), the landlord shall intimate his objections to the District Collector and then the Collector may pass the orders, obviously, taking into consideration the objections raised by the owner or the person interested. It is only thereafter that the Collector shall proceed to take the step under Section 4 (3) of the Act signifying the necessity to acquire the land. The language is clear and, beyond, making it implicit that the District Collector has to take into consideration the objections raised while passing the order, it does not spell out any further obligation on the part of the Collector to serve the copy of his order on the landlord or the person interested. At least, such a duty cannot be seen from the language of the section nor can the argument be accepted that there is such an inbuilt duty on the District Collector.

6. The learned counsel first relied on a decision of the Supreme Court in the case of Ajantha Industries v. Central Board of Direct Taxes (AIR 1976 SC 437). That was a case under the Income-tax Act pertaining to a transfer proceedings under Section 127 of the Income-tax Act, 1961. That section provides that the Commissioner can, after giving reasonable opportunity to the assessee, transfer the case from one Income-tax officer to another. The learned counsel more particularly relied on this judgment to suggest that therein the Supreme Court has found a duty to communicate the order so passed.

7. In paragraph 11, the Supreme Court records that the requirement of recording reasons under Section 127 is a mandatory direction under the law and the non-communication thereof is not saved by showing that the reasons exist in file although not communicated to the assessee.

8. Again, in paragraph 15 it is suggested that "when law requires the reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

9. From this, the learned counsel for the petitioner wants this Court to infer that even the order under Sections 4 (3) (a) and 4 (3) (b) would be of similar nature. The counsel is clearly incorrect. The duty to communicate that order has been found in the reported decision because if the order was not communicated, the assessee could not come to know as to where his case has gone and which particular Income-tax Officer was going to look into the matter

or conduct the assessment proceedings. There, the duty to communicate the order was found by the Apex Court, because on that depended the further proceedings.

10. In the above decision the assessment proceedings had not even started and they were sought to be transferred. If the order, taking into consideration the objections raised by the assessee, had been passed and the matter transferred to some other Income-tax Officer, it would have been but natural that the assessee had to have some idea as to where his assessment proceedings had gone and which Income-tax Officer was going to look into it. There is no such parallel in the present proceedings. The case is clearly not applicable.

11. The other decision referred to by the learned counsel is T.R. Thandur v. Union of India (AIR 1996 SC 1643). This is a decision under the Urban Land Ceiling Regulation Act, where the duty to consider the objections has been highlighted. There is nothing in the whole judgment requiring the order passed to be communicated and noncommunication of the order becoming fatal to the proceedings. This case is, therefore, not of any assistance to the case of the petitioner.

12. The third decision referred to by the learned counsel was State of West Bengal v. M.R.Mondal and another (2001) 8 SCC 443. The learned counsel more particularly relied on paragraph 16 of the judgment. This was a case dealing with Government contracts. The Apex Court in paragraph 16 observes thus:-

"On a proper consideration of the memorandum dated 11.3.1998, which was also stated to have been never communicated to the plaintiff, and the subsequent memorandum dated 24.8.1999 of the very Joint Secretary, who issued the earlier memo, that memorandum dated 11.3.1998 contained only certain proposals and not any final orders of extension or renewal of the contract as assumed in the judgment under challenge."

13. The Apex Court further observed thus:-

"An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of the law or claim to have come into operation and effect."

14. The learned counsel very heavily relies on these observations. In my opinion, the observations have been read out of context. Those observations are only in respect of inter se legal relationship between the concerned person and the Government in respect of the contract. The liability on account of non-communication of the order has been found to be a contractual liability. The facts of this case are clearly different.

15. The learned counsel then relied on a decision in the case of M.J.Sivani and others v. State of Karnataka and others (AIR 1995 SC 177 0), and more particularly, on paragraph 32, wherein the Apex Court has stressed upon the order being with reasons or the file being capable of disclosing the reasons for testing the correctness or otherwise of the order. An observation is made therein which reads thus:-

"Normally it must be communicated to the affected party, so that he may have an opportunity to have it tested in an appropriate forum."

The above observation has to be read on the backdrop of the facts stated in that judgment. There is nothing in that judgment to suggest that non-communication of the order, for which there is no duty in law, would by itself become fatal. That, obviously, would be reading something which is not there in the judgment. That decision is, therefore not applicable to the facts of the present case.

16. Lastly, the learned counsel referred to a decision in the case of S.K.Thirugnanasambandam and others v. The Government of Tamil Nadu and others [2001 (1) MLJ 328], a judgment by a learned single Judge of this Court. I have seen the whole judgment. There does not seem to be any such observation that the non-communication of the order passed under Section 4 (3) (b) to the owner or the person interested would in any manner invalidate the order. This

judgment is also not applicable.

17. In short, it is difficult for me to hold that merely because the order under section 4 (3) was not communicated to the owner or the person interested, the entire acquisition proceedings have been rendered invalid.

18. The learned counsel, however, pointed out that the petitioner had no chance to know as to whether at all the objections raised by him were considered by the Collector or were just ignored. All these could have been possible if the petitioner had obtained the copy of the order or had applied for it. It is obvious that the petitioner did not apply for copy of the order in time but had applied only on 15.11 .1996. It was too late. In fact, even in the writ petition, the copy of the order has not been furnished so as to test as to whether the collector had taken his objections into consideration or not. The thrust of the argument is on the non-supply of that order by the Collector to the land owner and the order being invalidated on that count alone. I do not agree with the contentions raised. The writ petition has no merits and the same is, accordingly, dismissed.

Index: Yes
Website: Yes

To
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2.The Additional Collector,
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